

2011 MAR 25 PM 1:28

JEANNIE HICKS, CLERK

BY: 

1 BRAD D. BRIAN (CA Bar No. 079001, *pro hac vice*)
Brad.Brian@mto.com
2 LUIS LI (CA Bar No. 156081, *pro hac vice*)
Luis.Li@mto.com
3 TRUC T. DO (CA Bar No. 191845, *pro hac vice*)
Truc.Do@mto.com
4 MIRIAM L. SEIFTER (CA Bar No. 269589, *pro hac vice*)
Miriam.Seifter@mto.com
5 MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, Thirty-Fifth Floor
6 Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
7

8 THOMAS K. KELLY (AZ Bar No. 012025)
tskelly@kellydefense.com
425 E. Gurley
9 Prescott, Arizona 86301
Telephone: (928) 445-5484
10

11 Attorneys for Defendant JAMES ARTHUR RAY

12 SUPERIOR COURT OF STATE OF ARIZONA
13 COUNTY OF YAVAPAI

14 STATE OF ARIZONA,

15 Plaintiff,

16 vs.

17 JAMES ARTHUR RAY,

18 Defendant.

CASE NO. V1300CR201080049

Hon. Warren Darrow

DIVISION PTB

**DEFENDANT JAMES ARTHUR RAY'S
MOTION TO COMPEL DISCLOSURE
OF BRADY MATERIAL**

19
20 Defendant James Arthur Ray, by and through undersigned counsel, hereby moves this
21 Court to compel the disclosure of *Brady* material and all other exculpatory or impeachment
22 evidence. This motion is supported by the following Memorandum of Points and Authorities.
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 The State's continued demand for advance disclosure of all impeachment materials the
4 Defense might draw upon in cross-examining the State's witnesses not only has no support in
5 law, but also brings into stark relief *the State's* repeated violations of its obligations derived from
6 *Brady v. Maryland*, 373 U.S. 83 (1963). It is the State—not the Defendant—who was required to
7 disclose the impeachment materials it now demands. This is not a harmless, one-off omission,
8 but rather a pattern rooted in the State's anemic and erroneous understanding of its ethical and
9 legal obligations of disclosure to the accused in a criminal prosecution.

10 Moreover, the State has aggravated its omissions by (1) asserting untruthfully to this
11 Court that the State had no knowledge of impeachment materials that the prosecutors and their
12 agents in fact knew about; (2) asserting incorrectly that the State's *Brady* obligations are triggered
13 only by impeachment material that is in the County Attorney's physical custody; and (3)
14 attempting to deflect its violations by accusing the Defense of "failing" to provide the apparent
15 *Brady* material to the government. The Defense has called these errors to the attention of the
16 State and the Court, but the prosecution has made no attempt to cure them.

17 Also baseless is the State's position regarding the criminal defendant's disclosure
18 obligations under Rule 15.2. Contrary to the State's repeated contention, apparently including a
19 demand for impeachment material sent by the State last night, Arizona's rules do not
20 contemplate, much less mandate, disclosure of a criminal defendant's cross-examination
21 materials. Instead, Rule 15.2's disclosure requirements pertain only to the defendant's "case-in-
22 chief," *State v. Stewart*, 139 Ariz. 50, 59 (1984), and only require disclosure of evidence to be
23 "used at trial"—that is, material that "the defendant will *offer* at trial," Comment to Ariz. R. Crim.
24 P. 15.2(c). The State's contrary position would violate a defendant's Sixth Amendment right to
25 confront the witnesses against him and would violate basic principles of the attorney work
26 product doctrine.

27 Taken together, the State's mischaracterization of its *Brady* obligations, its
28 misrepresentations to this Court, and its baseless insistence on Defense disclosure of

1 impeachment materials that are not intended to be moved into evidence, imperil Mr. Ray's
2 constitutional right to due process and a fair trial. The State's position also violates its "special
3 duty to ensure that [a] defendant receive[s] a fair trial," and to comport its discovery practice in a
4 manner that upholds that duty. *See State v. Rodriguez*, 192 Ariz. 58, 64 (Ariz. 1998). The
5 Defense has outstanding requests to the State for *Brady* material pertaining to other witnesses,
6 including purported expert Rick Ross, and cannot know whether the State's failure to disclose the
7 information is based on the absence of any exculpatory information, is because the State has
8 ignored the Defense's requests, or is due to the State's erroneous construction of its obligation.¹
9 For that reason, this Court should compel the State to comply with its *Brady* obligations, and its
10 corresponding obligations under Rule 15.1 and Arizona Rule of Professional Conduct ER 3.8, and
11 disclose all impeachment evidence as to all witnesses and all other exculpatory information of
12 which it is aware.

13 II. STATEMENT OF FACTS

14 As the Court is aware, the State has taken the position that the plain text of Rule
15 15.2(c)(3)—requiring disclosure of "a list of all papers, documents, photographs and other
16 tangible objects that the defendant intends to use at trial"—requires disclosure by the defendant of
17 civil lawsuits filed by the State's own witnesses. *See Draft Trial Transcript*, 3/22/11, at 86:20–
18 87:4 (Ms. Polk: "There is no exception there for public records for example. If the defendant
19 intends to use it at trial they have to provide it to the state. Mr. Li is reading from a document.
20 He's [obviously] reading from a document. And that's the same thing as using it at trial. Whether
21 or not he marks it as an exhibit is an additional step that he may or may not take. Anything he is
22 reading from that he is by definition using it and it falls within this disclosure obligation.").

23 ¹ In response to the Defense's request for *Brady* material regarding Mr. Ross, the State responded that it
24 had "no information beyond what the defense attorneys learned in the interview" of Mr. Ross. *See Letter*
25 *from Sheila Polk to Truc Do*, 2/2/11. In a February 4 letter, the Defense requested clarification of this
26 statement. In particular, the Defense requested that if the State had any knowledge of Mr. Ross's unlawful
27 and violent cult deprogramming activities prior to the January 21 defense interview, that the State provide
28 "full disclosure, including without limitations Mr. Ross's own statements to the State about his unlawful
and violent deprogramming activities and the dates of those statements. The mere fact that the defense
discovered some of this exculpatory information by other means does not relieve the State of its
affirmative and constitutional duty to provide *Brady* disclosure. We are happy to consider any authority
you have to the contrary." *See Letter from Truc Do to Sheila Polk*, 2/4/11. The State has never
responded. These letters are available to the Court upon request.

1 When the Court pointed out that civil lawsuits, as impeachment evidence, would
2 ordinarily fall under the State's *Brady* obligation, the State first took the position that it did not
3 know about the lawsuits:

4 "The states *Brady* obligation is to provide to the opposing party all
5 information that is in our possession or our control. These lawsuits
6 are not in the state's possession or control. *We don't know about them.*"

7 Draft Trial Transcript, 3/22/11, attached as Exhibit A, at 86: 5-9 (emphasis added). Shortly
8 thereafter, when questioned by the Court, the State reversed course and admitted it knew about
9 the lawsuits, but claimed it gained such knowledge only from the defense counsel in interviews of
10 the State's witnesses:

11 THE COURT: So you're saying you did not know there were
12 lawsuits filed, because if you did know then it was in your
possession it seems to me.

13 MS. POLK: Your Honor *the state is aware that lawsuits were filed*
14 *and mostly we learned about it through the defense interviews of*
15 *witnesses when the defendant started asking witnesses about*
16 *lawsuits* and kind of probing well, there is a confidentiality
17 agreement trying to get witnesses to talk about the terms *and so*
18 *that's how we learned there were lawsuits. That's how we learned*
19 *about it. Secondly the Brady obligation applies to documents that*
20 *are in our possession. They've never been in our possession* and
21 thirdly, their client is a party to those lawsuits. Even if some how
22 the court decided that the state had a *Brady* obligation to go out and
23 actively find lawsuits.

19 Draft Trial Transcript, 3/22/11, at 101:1-18.

20 As an initial matter, it unfortunately appears that the State has made false representations
21 to the Court. The State first said that it did not know about the lawsuits. That is not true. When
22 pressed, the State then admitted that it did know about the lawsuits, but stated that it "learned
23 there were lawsuits" from defense interviews of witnesses where "the defendant started asking
24 witnesses about lawsuits." The record instead reflects that both the County Attorney herself and
25 the Yavapai County Sheriff's Office had actual knowledge of the lawsuits, and direct contact with
26 the plaintiffs' civil attorneys, well before any defense interview of the States witnesses and
27 independent of any information from the Defense.
28

1 In the December 22, 2010 defense interview of Stephen Ray, it was Ms. Polk—not
2 defense counsel—who first raised the matter of Mr. Ray's lawsuit only minutes after the
3 interview began and, in doing so, admitted that her office has had prior correspondence with Mr.
4 Ray's attorney, Lou Diesel. *See Exhibit 710, Transcript of Interview of Stephen Ray, 12/22/10,*
5 *at 1:26–3:27, attached as Exhibit B:*

6 DO: Thank you. Good morning again, and on behalf of the defense, we do appreciate
7 you coming down here. I will be asking you questions, much like Detective Diskin has of
8 you in the prior interview. If anything that I say doesn't make sense to you just let me
9 know and I'll say it better. If at any time during this process, you have questions, please
10 feel free to interrupt me and ask, okay?

11 RAY: Great.

12

13 DO: Alright. Have you spoken to anyone ... you've ... Ms. Polk introduced herself.
14 Have you spoken to her before?

15 RAY: I don't think so.

16 DO: Alright. Anyone else from the Yavapai County Attorney's Office?

17 RAY: Not that I can recall.

18 DO: Alright.

19 POLK: And Truc, I'm sorry to interrupt

20 DO: Sure.

21 POLK: *Stephen, I was just looking at the file and noticing that you have an attorney in*
22 *a civil case, Lou Diesel?*

23 RAY: Correct.

24 POLK: *And we had some correspondence with Mr. Diesel.* I see it in my file indicating
25 that this interview would take place. Do you know if he had an intention to be
26 present for this interview?

27 RAY: I don't know of his intention. I spoke with him on the phone and he said that he
28 would be available if needed today.

1 POLK: But you're comfortable going ahead with this interview without Mr. Diesel
2 present?

3 RAY: Yes.

4 POLK: Okay. Thank you. I'm sorry to interrupt. Thank you, Truc.

5 DO: No problem. Thank you for that clarification. And again, if you ... if at any time
6 you want to ask Mr. Diesel a question, I don't mind you interrupting. We'll take a break.

7 RAY: Okay.

8 The defense has conducted interviews of only five civilian witnesses: Jennifer Haley on
9 December 16, 2010, Tere Gingerella, John DiMartino, and Kim Brinkley on December 21, 2010,
10 and Stephen Ray and Sheryl Stern on December 22, 2010. Stephen Ray is the only witness
11 among those interviewed by the defense who has filed a lawsuit and, in that one instance, it was
12 the State that interrupted the defense to discuss the witness's lawsuit. It is simply untrue, as Ms.
13 Polk represented to this Court, that the State "*learned about [the lawsuits] through the defense*
14 *interviews of witnesses when the defendant started asking witnesses about lawsuits* and kind of
15 probing well, there is a confidentiality agreement trying to get witnesses to talk about the terms
16 *and so that's how we learned there were lawsuits. That's how we learned about it.*" Draft Trial
17 Transcript, 3/22/11, at 101:1-18 (emphasis added).

18 The State and its agents have known about these lawsuits because their own witnesses
19 have told them so in interviews conducted more than a year ago. See Exhibit 706, Transcript of
20 Interview of Stephen Ray, 10/29/09, attached as Exhibit C, at 42:13-15 (RAY: "I have spoken
21 with an attorney but I haven't retained him yet and he's going to send a strongly worded letter
22 with the bills to James Ray requesting payment."); *id.* at 42:24-26 ("WILLINGHAM: "And yes
23 we are cooperating with the attorneys that the other families have obtained and there are going to
24 be transcripts at some point."); Exhibit 708, Transcript of Interview of Stephen Ray, 1/25/10,
25 attached as Exhibit D, at 11-22, 24-27 (DISKIN: "And so that, your lawyer can explain this, but
26 that affects your right as a victim . . . And I can't remember if it was your attorney or one of the
27 other attorneys was, you know, wanting us to list you guys as victims, and I don't know if I ever
28 got back to him, but after I looked into that with the prosecutor, we didn't feel like we needed to

1 do that right now.”); Exhibit 720, Transcript of Interview of Sidney Spencer, 10/13/09, attached
2 as Exhibit E, at 39: 26–28 (REYNOLDS [Spencer’s daughter]: “And we’re going to be getting a
3 lawyer at some point.” SPENCER: “I mean don’t you think that’s an appropriate response?”).

4 Furthermore, on November 23, 2010, the State disclosed to the defense copies of
5 Independent Medical Evaluations (“IMEs”) of Dennis Mehravar and Sidney Spencer conducted
6 by Dr. Francis O’Connor in connection with Mr. Mehravar’s and Ms. Spencer’s civil lawsuit
7 against James Ray International, Inc. and Mr. Ray. On January 3, 2011, in response to a request
8 from the Defense for the medical records referenced in the IMEs, the State explained that “[t]he
9 medical records reviewed by Dr. O’Connor and identified in his reports were provided to him by
10 the attorneys in the civil case.” Letter from Sheila Polk to Truc Do, 1/3/11, at 1, attached as
11 Exhibit F. The State obtained medical reports by experts retained in these civil lawsuits to
12 support its prosecution, but failed to obtain and disclose the lawsuit complaints and their
13 allegations which clearly contain *Brady* information such as bias and material inconsistent
14 statements. *See, e.g.*, Exhibit 784, Laurie Gennari Complaint.

15 The record is abundantly clear that, contrary to the State’s representations to this Court,
16 the prosecution and its agents had ample, actual knowledge of the civil lawsuits, and have been
17 on notice of such lawsuits for over a year. The position the State has taken regarding its
18 disclosure obligation—in an apparent effort to avoid recognition of its disclosure violation—is
19 factually false and plainly erroneous. A prosecutor’s disclosure obligation irrefutably extends to
20 impeachment evidence of which the State has knowledge; it not restricted to material in the
21 State’s physical custody. There is no “hot potato” rule that permits the State to avoid disclosure
22 of exculpatory evidence of which it is aware. *See infra* Part III.A.

23 III. ARGUMENT

24 A. The State has repeatedly failed to disclose material implicated by its *Brady* 25 obligation.

26 The State’s systemic failure to disclose impeachment evidence to the Defense implicates
27 both *Brady v. Maryland*, 373 U.S. 83 (1963), and the State’s corresponding obligations under
28 Rule 15.1 and Arizona Rule of Professional Conduct, ER 3.8. The *Brady* obligation, compelled

1 by the Constitution's Due Process Clause, requires disclosure of "evidence favorable to an
2 accused" that is "material either to guilt or to punishment," *id.* at 87, and includes evidence that
3 may be used to impeach a government witness, *United States v. Bagley*, 473 U.S. 667, 676
4 (1985). State-imposed obligations mirror, but are "broader than," the *Brady* requirement. *See*
5 *State v. Jessen*, 130 Ariz. 1, 4 (1981); Ariz. R. Crim. P. 15.1(b)(8); *see also* Ariz. Sup. Ct. R. 42,
6 Rules of Prof. Conduct, ER 3.8(d) ("The prosecutor in a criminal case shall . . . make timely
7 disclosure to the defense of all evidence or information known to the prosecutor that tends to
8 negate the guilt of the accused . . ."). The evidence at issue here—related to lawsuits the bias of
9 government witnesses against Mr. Ray, as well as other evidence relevant to impeachment that
10 the Defense has requested but not received—fall squarely within the State's disclosure duty.

11 The State's attempt to avoid the finding of a disclosure violation by averring that
12 disclosure is required only when the State has physical custody of impeachment material is
13 fundamentally incorrect. It is well-settled that the State must disclose exculpatory material within
14 its *knowledge or control*. *E.g.*, *United States v. Price*, 566 F.3d 900, 910 (9th Cir. 2009)
15 (defendant must create an inference that "the government possessed *or knew about* material
16 favorable to the defense and failed to disclose it" (emphasis added)); *United States v. Hamilton*,
17 107 F.3d 499, 509 (7th Cir. 1997) ("*Brady* . . . requires that the government provide a defendant
18 with exculpatory evidence within the government's *knowledge or control*." (emphasis added); *see*
19 *also* ER 3.8(d).

20 Moreover, the State's knowledge of the impeachment evidence need not be actual;
21 constructive possession of information is sufficient. *See United States v. Reyeros*, 537 F.3d 270,
22 281-82 (3d Cir. 2008). Constructive possession occurs when "although a prosecutor has no actual
23 knowledge, he should nevertheless have known that the material at issue was in existence."
24 *United States v. Joseph*, 996 F.2d 36, 39 (3d Cir. 1993). That the material was accessible to the
25 prosecution is also sufficient. "The basic import of *Brady* is . . . that there is an obligation on the
26 part of the prosecution to produce certain evidence actually or *constructively in its possession or*
27 *accessible to it* in the interests of inherent fairness." *Calley v. Callaway*, 519 F.2d 184, 223 (5th
28 Cir. 1975) (en banc) (emphasis added); *see also United States v. Auten*, 632 F.2d 478, 481 (5th

1 Cir. 1980) ("If disclosure were excused in instances where the prosecution has not sought out
2 information readily available to it, we would be inviting and placing a premium on conduct
3 unworthy of representatives of the [Government].").

4 Here, as described above, the State had knowledge of the impeachment evidence at issue.
5 Its representations to the contrary were false. And its anemic and erroneous view of its disclosure
6 obligation imperils Mr. Ray's Due Process rights. As noted earlier, Mr. Ray has outstanding
7 requests to the State seeking *Brady* material for all of the State's witnesses, specifically Rick
8 Ross. The Court should compel the State to turn over immediately all impeachment material for
9 its remaining witnesses, and all other exculpatory or impeachment material of which it has
10 knowledge.

11 **B. The Arizona Rules of Criminal Procedure do not require, and the**
12 **Constitution would not permit, mandatory disclosure of a criminal**
13 **defendant's cross-examination material.**

14 The State continues to insist, as recently as last night, that a defendant's disclosure
15 obligation under Rule 15.2(c)(3) extends to every shred of paper the Defense will rely upon,
16 including cross-examination and impeachment material that the Defense will not even offer and
17 move into evidence. Arizona's rules cannot be construed to support this position, and the federal
18 Constitution does not permit it.

19 **1. Arizona Rule of Criminal Procedure 15.2 does not require the Defense**
20 **to turn over material used only for cross examination.**

21 Arizona Rule of Criminal Procedure 15.2(c)(3) requires that the defendant make available
22 materials that it will "use" at trial. This rule, properly construed, is limited in two important
23 respects. Notwithstanding the State's insistence that the plain text of Rule 15.2(c)(3) mandates
24 disclosure *by the Defense* of the impeachment evidence the State has withheld, all aspects of Rule
25 15.2 indicate that the rule pertains (1) only to the Defense's affirmative case—and (2) in any
26 event, *never* to material the defendant does not intend to offer and move into evidence.

27 First, "use" of material at trial means introduction of that evidence in the defense's case-
28 in-chief: "The underlying principle of Rule 15 is adequate notification to the opposition of one's
case-in-chief in return for reciprocal discovery so that undue delay and surprise may be avoided at

1 trial by both sides.”” *State v. Stewart*, 139 Ariz. 50, 59 (1984) (emphasis added) (*quoting State v.*
2 *Lawrence*, 112 Ariz. 20 (1975)); *State v. Williams*, 121 Ariz. 218, 220 (App. 1978) (same). This
3 principle finds support in the simple fact that Rule 15 governs *pretrial* discovery. It cannot
4 reasonably be construed to encompass material that cannot be known prior to trial. Rules
5 15.2(c)(1) and (c)(2), for example, clearly refer to the disclosure of information relevant to the
6 Defense’s affirmative case—*i.e.*, the names and addresses of witnesses the defense intends to
7 call—and there is no reason that Rule 15.2(c)(3) would not have the same scope. Similarly, the
8 numerous timing provisions within Rule 15 emphasize the rule’s role as a framework for pretrial
9 discovery. *See, e.g.*, Ariz. R. Crim. P. 15.2(c) (the defendant shall make materials available to the
10 prosecutor “[s]imultaneously with the notice of defenses submitted under Rule 15.2(b)”—*viz.*,
11 within 40 days of arraignment); *id.* 15.6 (providing that the “final deadline” for disclosure is 7
12 days prior to trial). Yet cross-examination material, by its nature, can rarely be identified until
13 direct examination has occurred. Under the State’s construction of the rules, a special motion
14 under Rule 15.6 would be required prior to each and every cross-examination. That is plainly not
15 the law. *Cf. United States v. Nobles*, 422 U.S. 225, 235–36 (1975) (concluding that Federal Rule
16 “addresses only pretrial discovery,” and thus did not affect the court’s discretion whether to
17 order disclosure at trial).

18 Second, the Rule does not require the Defense to turn over materials that the Defense does
19 not intend to move into evidence. As the comment to Rule 15.2(c) explains, the rule “closely
20 parallels the prosecutor’s disclosure obligations under Rules 15.1(a)(1), (a)(3) and (a)(4), *except*
21 *that it is limited to evidence which the defendant will offer at trial.*” Ariz. R. Crim. P. 15.2(c)
22 (emphasis added)). Similarly, the comment to Rule 15.2(b), reflecting principles that extend to
23 all of the defendant’s disclosure obligations, notes that the rule “is limited to matters as to which
24 the defendant will introduce evidence.” Comment to Ariz. R. Crim. Proc. 15.2(b). “The
25 limitation is designed to allow the defendant to argue deficiencies in the state’s case (not
26 requiring the presentation of defense evidence) *without prior warning*, and to make his disclosure
27 obligations sufficiently clear and predictable.” *Id.* (emphasis added).

1 The parallel reciprocal discovery in the Federal Rules, upon which Arizona's Rule 15 is
2 modeled in part, similarly limits the defendant's disclosure obligation to the defendant's case-in-
3 chief, and does not extend to impeachment evidence. *See* Fed. R. Crim. P. 16(b)(1)(A) (a federal
4 defendant must permit the government, "upon request, to inspect and to copy or photograph
5 books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or
6 portions of any of these items if: . . . (ii) the defendant intends to use the item *in the defendant's*
7 *case-in-chief at trial*" (emphasis added)).² Because the rules do not require disclosure of
8 impeachment evidence, it is error for a court to prohibit the defense from using such evidence that
9 was not disclosed to the government. *See, e.g., United States v. Medearis*, 380 F.3d 1049, 1057
10 (8th Cir. 2004) (finding that the district court erred in prohibiting the defense from using a letter
11 to impeach a government witness because it had not been disclosed to the government); *see id.*
12 ("Because counsel for [the defendant] was attempting to use the letter to impeach [the witness']
13 testimony, it was not excludable under Rule 16(b)(1)(A)."); *United States v. Moore*, 208 F.3d
14 577, 579 (7th Cir. 2000) ("Moore sought to use the note to impeach the testimony of a witness for
15 the prosecution; it was not properly excludable under Rule 16.").

16 **2. The State's proposed disclosure requirement would infringe Mr. Ray's**
17 **Sixth Amendment right to effective cross examination.**

18 Nor would the federal Constitution permit the State's novel interpretation of Arizona's
19 disclosure provisions. Unlike discovery by a criminal defendant, "pretrial discovery by the
20 State[] is fraught with constitutional problems." *Moore v. State*, 105 Ariz. 510, 513 (1970).
21 Paramount among them is the risk of depriving the defendant of his Sixth Amendment right to
22 full and complete cross-examination. This is why *no* Rules of Criminal Procedure, *in any*
23 *jurisdiction*, contemplate that a defendant be forced to turn over impeachment material to the
24 State. As the Seventh Circuit explained, this omission is "not surprising when we consider that a

25 ² As with Arizona's Rules of Criminal Procedure, the prosecution's disclosure obligation is not so limited.
26 *Compare* Fed. R. Crim. P. 16(a)(1)(E) (requiring disclosure by the government if the government intends
27 to use the item in its case-in-chief or an item "is material to preparing the defense") *with, e.g.,* Ariz. R.
28 Crim. Proc. 15.2(d) cmt. ("This section closely parallels the prosecutor's disclosure obligations under
Rules 15.1(a)(1), (a)(3) and (a)(4), *except that it is limited to evidence which the defendant will offer at*
trial.") (emphasis added).

1 defendant's interest in being able to conduct a vigorous and effective cross-examination--an
2 interest central to the right of a criminal defendant under the Sixth Amendment 'to be confronted
3 with the witnesses against him,' would be impaired if he had to give a précis of his cross-
4 examination to the prosecution before trial." *United States v. Cerro*, 775 F.2d 908, 915 (7th Cir.
5 1985) (quoting *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974)). And an unreasonable limitation
6 on the defendant's cross-examination right constitutes reversible error. *State v. Dunlap*, 125 Ariz.
7 at 105 ("Since the right is guaranteed by the Constitution, a conviction will be reversed if cross-
8 examination has been unreasonably limited.").³

9 IV. CONCLUSION

10 The Defense requests the Court compel the State to turn over all impeachment material for
11 its remaining witnesses, and any other exculpatory evidence of which the State is aware. This
12 includes, without limitation:

- 13 • All material bearing on the bias or credibility of all government witnesses
- 14 • All impeachment material related to Rick Ross
- 15 • All communications, whether written or oral, between the prosecution and the
16 civil attorneys for the government witnesses in their complaints against Mr. Ray.

17 ³ Finally, as discussed at oral argument, the State's proposed disclosure rule is also inconsistent with age-
18 old procedures for cross-examination in Arizona and beyond. Arizona courts adhere to the longstanding
19 rule that counsel need only have a good faith basis to ask a question on cross-examination. *See, e.g., State*
20 *v. Palomarez*, 124 Ariz. 486, 490 (App. 1982) ("[T]he prosecutor had a factual basis for the questions and
21 thus they were not improper."); *State v. Romero*, 130 Ariz. 142, 145 (1981) (holding that "there was no
22 error in asking [questions on cross-examination] as the prosecutor had a legal and factual basis for the
23 questions"); 1 Ariz. Prac., Law of Evidence § 611:3 (Rev. 4th ed.) ("Before implying that damaging facts
24 exist . . . it is necessary both that it be legitimate to bring those facts out *and that the questioner be*
25 *prepared to prove them*, or at least to have a good faith belief in their existence.").

26 To allow assurance to the court and the adverse party of the good faith basis for a question, the
27 rule provides for a "prove up"-- that is, the court or adverse party may make a demand for an offer of proof
28 of the document that forms the good faith basis. *See State v. Enriquez*, 102 Ariz. 402, 405 (1967) ("[N]o
prosecuting officer, in order to impeach a witness, can engage in such questioning without being prepared
and able to prove the insinuations."); *United States v. Katsougrakis*, 715 F.2d 769, 779 (2d Cir. 1983)
("Although counsel may explore certain areas of inquiry in a criminal trial without full knowledge of the
answer to anticipated questions, he must, when confronted with a demand for an offer of proof, provide
some good faith basis for questioning that alleges adverse facts."). This procedure in no way contemplates
that counsel be required to disclose the underlying document or introduce it into evidence *before* using it
as a basis for a question in cross-examination. Such a rule would completely rewrite the good faith basis
requirement.

1 The Court must also reject the State's baseless insistence that the Defense owes the State
2 an obligation to disclose impeachment material regarding the State's own witnesses. This
3 insistence is so lacking in legal support, and so inconsistent with the Constitution and rules of
4 criminal procedure, that it reflects a sanctionable disregard for the prosecution's "special duty to
5 ensure that [a] defendant receive[s] a fair trial." *State v. Rodriguez*, 192 Ariz. 58, 64 (Ariz. 1998).

1
2 DATED: March 25, 2011

MUNGER, TOLLES & OLSON LLP
BRAD D. BRIAN
LUIS LI
TRUC T. DO
MIRIAM L. SEIFTER

3
4
5 THOMAS K. KELLY

6
7 By: 

8 Attorneys for Defendant James Arthur Ray

9 Copy of the foregoing delivered this 25 day
10 of March, 2011, to:

11 Sheila Polk
12 Yavapai County Attorney
13 Prescott, Arizona 86301

14 by 

77

1 A Yes

2 Q At one point there was I think you called

3 it a /SUR /TPHRUFL about a flashlight?

4 A Yes

5 Q And what you found out somebody scooted

6 out the back of the tent right?

7 A I found that out much later.

8 Q Somebody chose to scoot out the back of

9 the tents?

10 A Yeah

11 A I found that out from the news media

12 Q Now, you actually described this to

13 Detective Willingham as going to a sports /KAPL

14 where everyone is /KHAOERG you on, do you remember

15 that?

16 A Yes

17 Q Saying like, like in the sports /KAPL

18 where all the participants are saying you can do it

19 you can do it?

20 A Yes

21 Q And that's how you described it to

22 Detective Willingham on December 27 2009?

23 A Probably

24 Q Would it -- do you want me to show you

25 the transcript?

78

1 A If it's in there I believe it I don't

2 recall our conversation word for word

3 Q Am Ray, he didn't shove you into the

4 sweat lodge, did he?

5 A No

6 Q He didn't physically keep you from

7 leaving, did he?

8 A Not physically

9 Q He didn't grab you?

10 A No

11 Q I know you said he bell load at you?

12 A Yes

13 Q But he he didn't physically /RE

14 /TPRAEUPBD you did he?

15 A No not fiscally.

16 Q When he said at the end of the ceremony

17 when you were about to leave, he didn't touch you,

18 did he?

19 A No

20 Q He didn't say he was going to tackle you

21 if you tried to leave, did he?

22 A No

23 Q He didn't say he was going to wrestle

24 with you if you tried to leave?

25 A No.

79

1 Q He never said he'd hit you or anything

2 like that if you left?

3 A No

4 Q He didn't say that to anybody else, did

5 he?

6 A Than I know of.

7 Q He didn't say limb say I'm going to hit

8 you if you try to leave?

9 A No.

10 Q He didn't say I'm going to grab you and

11 tackle you if you try to leave?

12 A No

13 Q So if somebody said that he physically

14 restrained you from leaving, that would be untrue?

15 A He didn't have to

16 Q Let me just I understand what you're

17 position is, but I just want to?

18 A Not physically I was not physically

19 touched

20 Q If somebody said that he physically

21 restrained you from leaving, that would be untrue?

22 A Yes.

23 Q If somebody said that you witnessed him

24 physically restraining somebody, keeping something

25 somebody from leaving that would also be untrue?

80

1 MS POLK: Objection judge, argumentative.

2 THE COURT: Overruled you may answer that

3 THE WITNESS. What was it. /SROEUR.

4 MR LI

5 Q If somebody said that you witnessed

6 somebody -- you witnessed Mr Ray physically

7 restraining someone else from leaving, that would

8 be untrue?

9 A Yes

10 Q Now, have you ever claimed that when you

11 tried to leave the sweat lodge Mr Ray blocked your

12 passage with threats of offensive touching?

13 A No

14 Q Have you ever said, have you ever claimed

15 that you witnessed Mr. Ray or do so to other

16 participants?

17 A No

18 Q Have you ever claimed that when you

19 wanted to leave the sweat lodge, Mr Ray physically

20 touched you in an offensive way thereby causing you

21 injuries and extreme emotional distress?

22 A No

23 Q Have you ever claimed that Mr Ray some

24 how deprived you of rational thought?

25 A I didn't know that until much later.

<p>81</p> <p>1 Q. But have you ever claimed that?</p> <p>2 A. Claimed it in what</p> <p>3 Q. Have you ever claimed that Mr. Ray some</p> <p>4 how deprived you of rational thought?</p> <p>5 A. In what context would I be making this</p> <p>6 claim? Is</p> <p>7 Q. Let me move on. I'll ask you another</p> <p>8 question. Have you ever claimed that you were</p> <p>9 forced into the sweat lodge?</p> <p>10 A. No.</p> <p>11 Q. Because in fact you had not been forced</p> <p>12 into the sweat lodge?</p> <p>13 A. We walked in.</p> <p>14 Q. If somebody said that you had been forced</p> <p>15 into the sweat lodge that would be untrue?</p> <p>16 A. True.</p> <p>17 Q. Now, when we talked on Friday, you told</p> <p>18 us you were working for a company, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you said that that company was going</p> <p>21 out of business?</p> <p>22 A. Probably.</p> <p>23 Q. Now, how long have you known that?</p> <p>24 A. Since about three weeks after the sweat</p> <p>25 lodge.</p>	<p>83</p> <p>1 JRI the company, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Did you review the whole thing before you</p> <p>4 filed it or /SKWRU just file it without caring</p> <p>5 what's in it?</p> <p>6 A. I went through as much as I could stand</p> <p>7 to read.</p> <p>8 Q. It's about eight or nine pages give or</p> <p>9 take?</p> <p>10 A. Yeah.</p> <p>11 MS. POLK: Your Honor may we approach.</p> <p>12 THE COURT. Yes. Ladies and gentlemen</p> <p>13 /WAQEUPL going to take the morning recess. Ladies</p> <p>14 and gentlemen, please remember the admonition. The</p> <p>15 witness of course will remember the rule of</p> <p>16 exclusion. And please be ready to come back in at</p> <p>17 quarter till. About 25 minutes. Thank you.</p> <p>18 (Jury leaves)</p> <p>19 THE COURT. Ms. Polk.</p> <p>20 MS. POLK: Your Honor several issues. First</p> <p>21 of all pursuant to 15.1 there has been no</p> <p>22 disclosure to the state. That rules make it clear</p> <p>23 that any evidence the party intends to use must be</p> <p>24 provided to the other side. There has been no</p> <p>25 disclosure of this lawsuit. Secondly, the parties</p>
<p>82</p> <p>1 Q. About three weeks after the sweat lodge</p> <p>2 and just so we're clear, Mr. Ray doesn't have</p> <p>3 anything to do with the economics of that</p> <p>4 particular company that you're working for?</p> <p>5 A. No.</p> <p>6 Q. True or false, September 2009, about 11</p> <p>7 months after your tape-recorded interview with</p> <p>8 Detective Willingham you filed a lawsuit against</p> <p>9 JRI, the company?</p> <p>10 A. September 2009. It was /-BT the sweat</p> <p>11 lodge in October of oh nine.</p> <p>12 Q. Did you file a lawsuit against the</p> <p>13 company?</p> <p>14 A. Yes.</p> <p>15 Q. Is the case number 37 -- 2010- 00 oh 6010</p> <p>16 eight C are you N C?</p> <p>17 A. I have no idea.</p> <p>18 Q. Is your lawyer Robert Bone from San Jose</p> <p>19 from California?</p> <p>20 A. Yes.</p> <p>21 Q. Did you review the lawsuit before it was</p> <p>22 filed?</p> <p>23 A. Parts of it.</p> <p>24 Q. So, I just want to make this so we're</p> <p>25 absolutely cleared. You filed a lawsuit against</p>	<p>84</p> <p>1 with the court had discussed this issue of the</p> <p>2 lawsuit and whether it would be relevant. And at</p> <p>3 the time the defense indicated to the state they</p> <p>4 did not intend to ask the witness we were</p> <p>5 discussing about the lawsuit. And the state</p> <p>6 believed perhaps wrongly that the /TKPEPBS would</p> <p>7 provide notice to the state and notice to The Court</p> <p>8 with an opportunity to argue all the issues and</p> <p>9 resolve all the issues surrounding the filing of</p> <p>10 the lawsuit by any of the witnesses. The state had</p> <p>11 no notice. The court I believe has had no notice</p> <p>12 and there are issues concerning if a lawsuit is</p> <p>13 introduced then, what can the parties do next?</p> <p>14 That issue has not been resolved. Mr. Li has now</p> <p>15 opened that door. The state does not have a copy</p> <p>16 of this lawsuit. We do not know the status of the</p> <p>17 lawsuit whether it's been resolved or not. I can</p> <p>18 obviously find out from the witness. I don't know</p> <p>19 whether or not there is a confidentiality agreement</p> <p>20 what this witness can talk about or testify about.</p> <p>21 But again Your Honor these were all issues that</p> <p>22 /SOUT side the presence of the jury the parties</p> <p>23 were discussing with the court. none of its been</p> <p>24 resolved. No notice to the state that the defense</p> <p>25 intended to can ask this witness about the lawsuit.</p>

<p style="text-align: right;">85</p> <p>1 and no notice to The Court And here we are</p> <p>2 MR. LI Your Honor, first of all. We don't</p> <p>3 have any obligation to disclose anything Because</p> <p>4 we're not actually introducing it into evidence</p> <p>5 We did talk about this issue about whether or not a</p> <p>6 lawsuit egg /SEUS /TEBZ of a lawsuit is admissible</p> <p>7 or is relevant in discussing buys and motive We</p> <p>8 believe it is relevant with respect to this witness</p> <p>9 who has testified one one way on tape right after</p> <p>10 the incident Suzan and now her testimony is quite</p> <p>11 different We are ^ aloud ^ allowed to impeach her</p> <p>12 about this Moreover, you know, just on the</p> <p>13 disclosure issue Your Honor We had a long</p> <p>14 conversation about this several weeks ago It is</p> <p>15 the states obligation to find Brady and the fact</p> <p>16 that a witness has a buys is Brady. And it is not</p> <p>17 the defenses obligation to find Brady We do so</p> <p>18 because we're diligent. But if I were the state</p> <p>19 and I were going to call the witness I would want</p> <p>20 to know Particularly in a case like this Hey</p> <p>21 have you filed a lawsuit What have you said in</p> <p>22 the lawsuit. Do you want money These are all</p> <p>23 issues that go directly to the credibility of the</p> <p>24 witness And that are all those responsibilities</p> <p>25 about finding out those issues and disclosing to</p>	<p style="text-align: right;">87</p> <p>1 additional step that he may or may not take</p> <p>2 Anything he is reading from that he is by</p> <p>3 definition using it and it falls within this</p> <p>4 disclosure obligation Your Honor, the state, with</p> <p>5 we argued discuss this issue of a lawsuit with</p> <p>6 respect to Mr. Mehravar who was a previous witness</p> <p>7 The state agreed that the existence of a lawsuit</p> <p>8 The fact of a lawsuit is fair game and it goes to</p> <p>9 motive or buys Then there is additional issues.</p> <p>10 The complaint itself is hearsay Clearly hearsay.</p> <p>11 It's an outs of court statement that the</p> <p>12 /TKPEPBS -- at least with respect to Mr Mehravar</p> <p>13 intended to introduce because they wanted to try to</p> <p>14 prove to the you shall jury there is other issues</p> <p>15 /SKUFP such as toxin there is other liabilities</p> <p>16 issues /TPAOR /A*FR all sort of issues that are not</p> <p>17 settled by a lawsuit but are language used in that</p> <p>18 lawsuit The complaint is hearsay. To be reading</p> <p>19 the complaint in the language of the complaint to</p> <p>20 this witness is hearsay and should not be allowed</p> <p>21 I agree that the fact of the lawsuit and she has</p> <p>22 admitted it goes to motive or buys and then the</p> <p>23 inquiry stops there Although it's the states</p> <p>24 position that if these lawsuits have been settled</p> <p>25 if Mr Ray or his insurance company have paid money</p>
<p style="text-align: right;">86</p> <p>1 the defense are all duties that fall squarely on</p> <p>2 the state</p> <p>3 THE COURT. Ms Polk</p> <p>4 MS. POLK. In /POPBS it's not the states</p> <p>5 obligation to go find Brady. The states Brady</p> <p>6 obligation is to provide to the opposing party all</p> <p>7 information that is in our possession or our</p> <p>8 control These lawsuits are not in the states</p> <p>9 possession or control We don't know about them</p> <p>10 The defendant nose about them because he's a party</p> <p>11 to them And so the statement to the court that</p> <p>12 it's the states obligation to go find Brady and</p> <p>13 disclose it is simply false Our obligation is to</p> <p>14 disclose what is in our possession or control.</p> <p>15 Rule 15 1 It's 15 two, C three says that the</p> <p>16 defendant shall provide to the state a list of all</p> <p>17 papers documents photographs and other tangible</p> <p>18 objects that the defendant intend to use at trial</p> <p>19 There is no exception ^ there for ^ therefore</p> <p>20 public records for example If the defendant</p> <p>21 intends to use it at trial they have to provide it</p> <p>22 to the state Mr Li is reading from a document</p> <p>23 He's /OBL were you Li reading from a document And</p> <p>24 that's the same thing as using it at trial</p> <p>25 Whether or not he marks it as an exhibit is an</p>	<p style="text-align: right;">88</p> <p>1 to these witnesses, that information should be</p> <p>2 ^ aloud ^ allowed as well Because that to me is</p> <p>3 an admission of guilt by Mr Ray, if he's set /S-LG</p> <p>4 these lawsuits and I think Mr. Li has now opened</p> <p>5 that door and the state should be ^ aloud ^ allowed</p> <p>6 to ask the witness has this witness been settled</p> <p>7 and did Mr Ray pay money to you in order to make</p> <p>8 this /HRAUTD /SELT lawsuit settle It also /TPHE</p> <p>9 gates the suggestion that this witness now has a</p> <p>10 motive to lie because her lawsuit has settled</p> <p>11 It's a very different scenario if there is a</p> <p>12 pending lawsuit and she stands to gain oriented in</p> <p>13 some way is concerned about the impact of her</p> <p>14 testimony on a pending lawsuit If this lawsuit</p> <p>15 has settled and I believe that it has, although</p> <p>16 I've not received any disclosure from the defense,</p> <p>17 but if this lawsuit is settled then any motive to</p> <p>18 /TAEU letter her testimony in such a way is now</p> <p>19 gone. Her testimony cannot impact something that</p> <p>20 has settled has been resolved or and has gone away</p> <p>21 THE COURT With regard to the hearsay point</p> <p>22 Ms Polk, if you recall from the Hernandez case,</p> <p>23 the document there was a governmental claim</p> <p>24 submitted under title 12 And the majority of the</p> <p>25 Supreme Court said that that's impeachment and</p>

<p>89</p> <p>1 that's outside of 408 I think that might be what</p> <p>2 Mr. Li is looking at right now I don't know But</p> <p>3 that was a governmental claim letter and as I</p> <p>4 recall, the majority indicated the concern that if</p> <p>5 people are going to be asserting claims, it should</p> <p>6 be a truthful statement and it can be used for</p> <p>7 impeachment There was a did I sent in that case</p> <p>8 and I think it was a dissent based primarily on</p> <p>9 408. But this is a complaint. It's not a</p> <p>10 governmental claim letter So there is that</p> <p>11 distinction with the Hernandez case, but doesn't</p> <p>12 Hernandez really address the concern with hearsay</p> <p>13 when someone something is being used for impeach</p> <p>14 I think it's the Hernandez isn't that the one</p> <p>15 MR. LI I believe so Your Honor.</p> <p>16 MS. POLK And Your Honor on the issue of</p> <p>17 hearsay, to be an exception to the hearsay rule it</p> <p>18 is or none hear /SEU it is an admission by party oh</p> <p>19 /POEPB /EPBT This person unlike Hernandez is not</p> <p>20 I party to this proceeding</p> <p>21 THE COURT But if it goes to buys, bias</p> <p>22 Okay It's not strictly speaking -- well, that's</p> <p>23 the question In Hernandez I don't know if the</p> <p>24 person signed the /KPWOFT /AL claim letter in that</p> <p>25 case. I don't think it's discussed. I don't know</p>	<p>91</p> <p>1 MR. LI Your Honor, if I may</p> <p>2 THE COURT Yes.</p> <p>3 MR. LI There are many, many different</p> <p>4 responses to Ms. Polk's argument which you will sum</p> <p>5 up with I think she has the evidence code wrong</p> <p>6 First of all, this is not being all I need is a</p> <p>7 good faith basis to ask And that's all I've done,</p> <p>8 Just in fact just for the record what I'm reading</p> <p>9 from is my cross-examination outline And we are</p> <p>10 not introducing any evidence. So we're not seeking</p> <p>11 to introduce quote unquote hearsay What we are</p> <p>12 doing is we're impeaching a witness with prior</p> <p>13 inconsistent statements and demonstrating motive</p> <p>14 and buys Understand rule 613 The issue that</p> <p>15 Ms. Polk stepped into, which would literally result</p> <p>16 in reversible error the moment she asks the</p> <p>17 question is relates to rule 408, which governs the</p> <p>18 ad ^ Miss ^ miss /PWEULTS or none admissibility of</p> <p>19 any settlement or settlement offers And it is</p> <p>20 explicitly not permissible to go into that</p> <p>21 Understand rule 408 I mean it just says,</p> <p>22 prohibited 408 A /PRO exhibit Ted use evidence of</p> <p>23 the following and this is settlements is not</p> <p>24 admissible on behalf of any party when offered to</p> <p>25 prove liability So, it would literally be</p>
<p>90</p> <p>1 if the complaint was signed in this which would</p> <p>2 give it some additional indicia of being adopted</p> <p>3 MS. POLK Your Honor again, in looking at</p> <p>4 rule 801, a party or that parties agent such as the</p> <p>5 lawyer can make a statement that the party</p> <p>6 therefore adopt But again, the operative question</p> <p>7 is is that person a party to the lawsuit Then</p> <p>8 it's an admission by a party oh /POEPB /EPBT In</p> <p>9 this case Ms. Gennan is not a party to this</p> <p>10 proceeding and so clearly it is hearsay</p> <p>11 Additionally, again there has been no disclosure to</p> <p>12 the state I don't know what the record is that</p> <p>13 Mr. Li is reading from, if it's a complaint, has it</p> <p>14 been signed is it a verified complaint We don't</p> <p>15 know any of that Because there has been no</p> <p>16 disclosure and he don't have it I would just</p> <p>17 emphasize again, two questions one is the existence</p> <p>18 of a lawsuit and I do believe that's relevant and</p> <p>19 Mr. Li has ^ established ^ accomplished that The</p> <p>20 second is the complaint itself or reading from a</p> <p>21 document, which is clearly hearsay, Mr. Gennan is</p> <p>22 is not a party oh /POEPB /EPBT as Hernandez or the</p> <p>23 Hernandez attorney was And therefore it's it's a</p> <p>24 statement made which an agents She's simply not a</p> <p>25 party so not an exception under the hearsay rule</p>	<p>92</p> <p>1 reversible error on the moment she opened her mouth</p> <p>2 to ask about that question And Your Honor just</p> <p>3 for the record The case hasn't settled So the</p> <p>4 conditions press dents that Ms. Polk beliefs</p> <p>5 matters /-RPBGS that she in fact doesn't have a</p> <p>6 /PHAO /TEUFPL to lie or to change her story, just</p> <p>7 doesn't exist She has an active case she has an</p> <p>8 economic interest in the outcome of this particular</p> <p>9 criminal case /-FPLS we have a right to ask about</p> <p>10 this I think the point one point and I won't</p> <p>11 address if the court already agrees with us But</p> <p>12 it is the states obligation to find out whether or</p> <p>13 not there witness has bias It is not simply a</p> <p>14 question of whether or not they actually physically</p> <p>15 possess a document If they have reason to believe</p> <p>16 that there might be such a document They need to</p> <p>17 go ask for it And I want to make another point</p> <p>18 /SKRUFT on this on the record Your Honor With</p> <p>19 respect with respect to Dennis Mehravar, we have</p> <p>20 /SKADZ of communication between us and the state,</p> <p>21 not /SKADZ, but several letters communication</p> <p>22 between us and the state in which the state</p> <p>23 acknowledges that they need to talk to the</p> <p>24 plaintiff's lawyers in these various cases So</p> <p>25 it's not as if they don't know about a lawsuit or</p>

<p>93</p> <p>1 lawsuits, setting aside the fact that it's obvious</p> <p>2 that people are going to file lawsuits understand</p> <p>3 these circumstances, but they in fact have</p> <p>4 knowledge of lawsuits being filed by various of the</p> <p>5 participants So they cannot just say we now we're</p> <p>6 not going to actually ask for any complaints so</p> <p>7 therefore we won't have custody of the complaints</p> <p>8 They can't play that game. If they have knowledge</p> <p>9 of something, and they're communicating with these</p> <p>10 lawyers, they have a duty They have a duty I duty</p> <p>11 to get them And one more point that Ms. Do points</p> <p>12 out she has listened to hours and hours of</p> <p>13 detective interviews The detectives talk about</p> <p>14 the lawsuits and the plaintiffs lawyers So it is</p> <p>15 not the case that the state is unaware of the</p> <p>16 existence of lawsuit All of this doesn't matter.</p> <p>17 Basically the bottom line is I have a good faith</p> <p>18 basis to ask questions of this witness relate today</p> <p>19 buys bias /EUPL not seeking to use move into</p> <p>20 evidence this complaint I'm simply asking her</p> <p>21 about her existing bias</p> <p>22 THE COURT ^ Miss ^ Miss /PWOEBG poke</p> <p>23 Ms. Polk</p> <p>24 MS POLK. Two points First of all this is</p> <p>25 not a trial by surprise states Going back to</p>	<p>95</p> <p>1 motive or buys as whether or not you filed a</p> <p>2 lawsuit. Mr. Li has done that. This witness has</p> <p>3 admitted that she in fact filed a lawsuit. That's</p> <p>4 part one. But to go to the next step, which is</p> <p>5 then start use /AEUG hearsay document and reading</p> <p>6 from it to question a witness is simply not</p> <p>7 ^ aloud ^ allowed She is not a party, she's not a</p> <p>8 party under rule 801 Her attorney is not a party.</p> <p>9 and the Hernandez case specifically talks about</p> <p>10 using a document to examine or cross a party to a</p> <p>11 litigation This person is not a party and it</p> <p>12 simply does not fall under the hearsay exception</p> <p>13 Again, we don't know what the complaint looks like.</p> <p>14 Is it verified or not. Is it signed by her</p> <p>15 attorney She's already said she didn't really</p> <p>16 read it To allow Mr. Li to continue to question</p> <p>17 her about specific paragraphs is simply unfair</p> <p>18 /TKEUGS natural I it's unfair because a copy has</p> <p>19 not been given to the state When we discuss this</p> <p>20 issue with the court, concerning witness Dennis</p> <p>21 Mehravar, the court agreed with the state that if</p> <p>22 the defense was going to be ^ aloud ^ allowed to</p> <p>23 read from certain paragraphs, then the state could</p> <p>24 read from some of the other paragraphs Which</p> <p>25 didn't help the defenses /KAES The defense is</p>
<p>94</p> <p>1 rules 15 115 two There is an obligation on the</p> <p>2 parties to let the other side know what is the</p> <p>3 evidence we're going to use so that if the state a</p> <p>4 party has an objection a party can file a motion in</p> <p>5 limine, we can brief it and we can get rulings from</p> <p>6 the court ahead of time. That's what these rules</p> <p>7 are about and that's where 15 two clearly says the</p> <p>8 defense has to disclose to the state any exhibits</p> <p>9 records or any documents they intend to use</p> <p>10 Copying from a civil complaint language and writing</p> <p>11 it up in your script for cross-examination does not</p> <p>12 allow a party to circumvent that rule If you're</p> <p>13 going to start reading from a complaint, whether</p> <p>14 you have the complaint in your hand or you /RE</p> <p>15 typed it and put it in your script You still have</p> <p>16 an obligation to let the other side know you intend</p> <p>17 to use this document and had the defense ^ do</p> <p>18 not ^ done so then we wouldn't be arguing this in a</p> <p>19 break We could have thoroughly briefed it we</p> <p>20 would have argued we would have had a rule from the</p> <p>21 tort court ahead of /TAEUFPL that's the first</p> <p>22 issue /TKEUS core I violation The second issue</p> <p>23 the appropriate use of the information Evidence</p> <p>24 of the lawsuit itself Again, the state agrees</p> <p>25 that it is fair game to question a witness on</p>	<p>96</p> <p>1 aware of that and so now what they've ^ do</p> <p>2 not ^ done rather than bring that complaint into</p> <p>3 court so we can see the entire document and have a</p> <p>4 fair redirect, if cross-examination is going to be</p> <p>5 ^ aloud ^ allowed, we can't even do that Because</p> <p>6 he's reading parts of a document without bringing</p> <p>7 the entire document into court and without giving</p> <p>8 it to the state. And lastly judge, I'd like to</p> <p>9 just discuss for a moment rule 408, offers to</p> <p>10 compromise and compromise is not add ^ Miss ^ miss</p> <p>11 /EBL Are not add ^ Miss ^ miss /EBL</p> <p>12 ^ Accept ^ Except you need to read subparagraph B</p> <p>13 which says permitted uses, and the second sentence</p> <p>14 says examples of permissible purpose include /PROFP</p> <p>15 a witness's buys or prejudice And Mr. Li has used</p> <p>16 it to has used the lawsuit to establish bias or</p> <p>17 prejudice understand rule 408 then The state is</p> <p>18 ^ aloud ^ allowed to negate the suggestion of bias</p> <p>19 or prejudice by going into the compromise itself to</p> <p>20 the /SELT /-PLT itself Because very clearly if</p> <p>21 this lawsuit has been settled and I believe it has</p> <p>22 been There is no bias There is no motive ^ any</p> <p>23 more ^ anymore to tailor testimony because it won't</p> <p>24 affect anything. So the state is ^ aloud ^ allowed</p> <p>25 to let the jury know that yes that lawsuit has been</p>

<p>97</p> <p>1 settled.</p> <p>2 THE COURT I'm a little bothered by the</p> <p>3 implication Ms. Polk if you're indicating since the</p> <p>4 lawsuit is over someone might revert back to a</p> <p>5 different story. There is something that doesn't</p> <p>6 quite ring. Well the lawsuit is pending there</p> <p>7 might be a buys but when it's over something</p> <p>8 different would be said. There is just something</p> <p>9 about that. Poke.</p> <p>10 MS. POLK Your Honor the suggestion is being</p> <p>11 made by Mr. Li this witness has a motive or buys to</p> <p>12 lie. To complete the story, the jury need to know</p> <p>13 that that lawsuit is not pending, they can draw</p> <p>14 whatever implications they want from it. But that</p> <p>15 lawsuit is not pending. He has suggested through</p> <p>16 cross-examination that her early statements, which</p> <p>17 were made shortly after the event some how conflict</p> <p>18 with her testimony today. And now he's trying to</p> <p>19 suggest that there is a lawsuit out there and that</p> <p>20 she's trying to /PWOL center her testimony today to</p> <p>21 some how bowl /TER is that lawsuit to complete the</p> <p>22 story the the jury need to know that lawsuit isn't</p> <p>23 out there ^ any more ^ anymore</p> <p>24 THE COURT I'm saying that. Here's the idea</p> <p>25 If there have been depositions during the lawsuit</p>	<p>99</p> <p>1 introduce the complaint. We've basically</p> <p>2 ^ established ^ accomplished the fact of the</p> <p>3 complaint. And you know, we're going to -- I am</p> <p>4 going to put it in front of her to show that she</p> <p>5 did make a number of those claims that I said that</p> <p>6 if anybody said this it would be untrue. I think I</p> <p>7 have an absolute right to do that under Hernandez</p> <p>8 and other cases. It's not being offered for the</p> <p>9 /TRAUGTD of the matter asserted. It is being</p> <p>10 offered to show an inconsistent statement and also</p> <p>11 her buys</p> <p>12 THE COURT And the inconsistent statement,</p> <p>13 that is -- admissibility basis beyond the 801 rule</p> <p>14 obviously. Ms. Polk go ahead</p> <p>15 MS. POLK First of all it's not her statement</p> <p>16 it's a statements by an attorney. Secondly, Mr. Li</p> <p>17 has just essentially admitted discovery violation</p> <p>18 He said now he intends to put this complaint in</p> <p>19 front of her. It's never been disclosed to the</p> <p>20 state. We still don't have it</p> <p>21 THE COURT Let me ask you in that regard</p> <p>22 You don't -- you're saying you had no idea there</p> <p>23 were lawsuits. Is that /KWAH you're saying. You</p> <p>24 had no idea there were lawsuits</p> <p>25 THE WITNESS The</p>
<p>98</p> <p>1 certain things said, the person would likely be --</p> <p>2 I'm saying this in the abstract a person would</p> <p>3 likely be consistent with that tend to be</p> <p>4 consistent regardless of whether or not the case</p> <p>5 was resolved.</p> <p>6 MR. LI Your Honor it hasn't been resolved</p> <p>7 This entire discussion is academic. I would submit</p> <p>8 Ms. Polk's reading is wrong doesn't matter because</p> <p>9 it hasn't been settled</p> <p>10 THE COURT Ms. Polk, you didn't address the</p> <p>11 Hernandez case when it talks about the use of the</p> <p>12 claim letter. How is that distinguishable</p> <p>13 MS. POLK Your Honor again because Hernandez</p> <p>14 was a party to that action. And understand 801.</p> <p>15 801 D two an admission by a party oh /POEPB /EPBT</p> <p>16 is ^ aloud ^ allowed as an exception to the hearsay</p> <p>17 rule. She is not a party</p> <p>18 THE COURT I understand that. Okay. I'm</p> <p>19 going to go back I have the case handy</p> <p>20 MR. LI Your Honor</p> <p>21 THE COURT Go ahead</p> <p>22 MR. LI If I can just short /SER cut this</p> <p>23 I'm not going much /PURT I have one or two</p> <p>24 questions directly /REPLT /-D to bias. I'm going</p> <p>25 to ask those questions. We're not seeking to</p>	<p>100</p> <p>1 MS. POLK The state nose there are lawsuits</p> <p>2 filed</p> <p>3 Q You think that would come under a</p> <p>4 disclosure obligation to have to say that or are</p> <p>5 you relying on the fact that the defense must have</p> <p>6 known that also. Because it would seem the cases</p> <p>7 indicates the fact that a lawsuit is filed, that is</p> <p>8 something that goes to motive or bias. Isn't that</p> <p>9 something the state would normally disclose under</p> <p>10 Kyle Brady principles?</p> <p>11 MS. POLK Your Honor not necessarily. But</p> <p>12 these witnesses have been interviewed. The defense</p> <p>13 is the one that attempted to ask them about</p> <p>14 lawsuits. Even though their client is a party to</p> <p>15 the lawsuits. Your Honor, these are lawsuits that</p> <p>16 their client is a party to</p> <p>17 THE COURT So you're saying you would not</p> <p>18 have will to disclose that because they would have</p> <p>19 had to have known it.</p> <p>20 MS. POLK Yes</p> <p>21 Q And they don't have to disclose it</p> <p>22 because you must have known it?</p> <p>23 MS. POLK Well, two separate issues. First</p> <p>24 of all is there a /PWAEUD Brady obligation. That</p> <p>25 is not information within the states possession</p>

<p style="text-align: right;">101</p> <p>1 THE COURT So you're saying you did not know 2 there were lawsuits filed, because if you did know 3 then it was in your possession it seems to me. 4 MS POLK: Your Honor the state is aware that 5 lawsuits were filed and mostly we learned about it 6 through the defense interviews of witnesses when 7 the defendant started asking witnesses about 8 lawsuits and kind of probing well, there is a 9 confidentiality agreement trying to get witnesses 10 to talk about the terms and so that's how we 11 learned there were lawsuits That's how we 12 learned about it. Secondly the Brady obligation 13 applies to documents that are in our possession 14 They've never been in our possession and thirdly, 15 their client is a party to those lawsuits. Even if 16 some how the court /KE decided that the state had a 17 Brady obligation to go out and actively find 18 lawsuits 19 THE COURT And I didn't say that Ms Polk I'm 20 saying if you already knew though you had the 21 information I agree no, you don't have to go out 22 and investigate I don't agree with that 23 proposition. I'll tell you that right now I 24 don't agree that the state has to go out and 25 explore every possibilities. But when you have</p>	<p style="text-align: right;">103</p> <p>1 faith basis. That's the test 2 MS POLK: Your Honor the state would request 3 at this time the a copy of the complaints from the 4 defense 5 THE COURT And they're entitled to that. I 6 think that's covered under 613 I think the 7 defense is offering this primarily under the 8 authority of 613 9 MS POLK. Your Honor is the court going to 10 allow the state to redirect regarding everything 11 that's in the complaint I would just note Your 12 Honor this is not a verified complaint 13 THE COURT. I don't know that a /KPRAEUPBT 14 would -- 15 MR LI Your Honor the only questions we're 16 asking are one did you file a complaint and are you 17 seeking money and those are questions that we've 18 ^ established ^ accomplished, as a start There is 19 one other question along those lines Then the 20 second question is I asked her a number of 21 questions, have you ever claimed and And she said 22 no And this lawsuit makes those claims I'm not 23 going to back through every one of them But I'll 24 walk through two of them. And I have a right to do 25 that This is a prior inconsistent statement.</p>
<p style="text-align: right;">102</p> <p>1 information possess that, then that question 2 doesn't even arise 3 MS POLK Yes and then the next step is under 4 rule 15 two. If you intend to use these documents 5 at trial you have to disclose them Period You 6 have to disclose them 7 THE COURT Okay The questioning so far is 8 permissible It's cross-examination from a 9 document that was -- I don't know the level of 10 endorsement. That is an issue. And obviously, it 11 would /SPWR-PB clear have been clear had this 12 matter been presented at an earlier time But the 13 questions at this point Mr. Li has indicated you 14 need a good faith basis to ask a question And 15 that's separate from the ultimate admissibility of 16 the extrinsic evidence of the complaint it /EFL 17 rehabilitated self itself. My feeling on that 18 that's a document people have long aware of It 19 should have been does closed if it was going to be 20 offered as extrinsic evidence and it wasn't And 21 the rules require that So the complaint itself 22 would not be admissible Cross-examination from 23 the complaint for this witness. It's been covered 24 in any event without objection to this point And 25 it's going to be permitted Cross-examination good</p>	<p style="text-align: right;">104</p> <p>1 THE COURT. Where is your authority for a 2 complaint that's signed by an attorney 3 THE WITNESS. She said that she reviewed it 4 I'm entitled to ask her how far she's reviewed it. 5 I'm entitled to refresh her recollection with it 6 I'm entitled to ask good faith basis questions 7 isn't it true in your complaint you said and And 8 she can say no. She can say I don't remember And 9 I can say would it refresh your recollection. This 10 is very vanilla Your Honor And I'm not asking to 11 introduce these into evidence We did talk about 12 this several weeks ago And I think, I am 13 operating under the courts guidelines 14 THE WITNESS. I understand that the state 15 would rather have these documents ahead of time 16 But we have a right to have this witness tested as 17 to her bias and motive without preparation, without 18 her being able to change her story on before she 19 get on the stand We have a right to have the jury 20 see her admit that she has a bias 21 MS POLK Your Honor first of all these are 22 not statement by the witness These are statement 23 by her attorney, they do not fall under rule 801 24 Because she's not a party. Under rule 801 25 statements made by an agent or an attorney are also</p>

<p>105</p> <p>1 admissible as statement by a party. But she's not</p> <p>2 a party and so trying to impeach her with</p> <p>3 statements made by an attorney in a state where you</p> <p>4 have to plead every possible theory of liability</p> <p>5 when you file the complaint is simply</p> <p>6 unprecedented There is no basis to show her the</p> <p>7 complaint She has admitted there is a lawsuit.</p> <p>8 And that's the end of the inquiry, there is</p> <p>9 certainly no basis to confront her by statements</p> <p>10 made by an attorney these are not her statement</p> <p>11 Essentially what Mr. Li is asking is /WA your</p> <p>12 attorney truthful. Your attorney made these</p> <p>13 /TAEUPLT That's completely lateral in admissible.</p> <p>14 Running far afield of what this inquiry is about</p> <p>15 Which is does this witness have a buys or motive</p> <p>16 That comes out with the existence of a lawsuit</p> <p>17 And that has come out and she has admitted it</p> <p>18 There is no basis to go any further She has</p> <p>19 admitted there is a lawsuit</p> <p>20 THE COURT: There is a difference between the</p> <p>21 prior inconsistent statement and good faith bay</p> <p>22 /SES for a statement also I don't think the test</p> <p>23 is the same In any event, the complaint itself is</p> <p>24 not going to be admitted and then you get to the</p> <p>25 problem though of going into so much detail that</p>	<p>107</p> <p>1 MR. LI: I have a copy of the case if I can</p> <p>2 approach.</p> <p>3 THE COURT. Yes . There is enough to /PHER</p> <p>4 permit cross-examination the document itself will</p> <p>5 not be permitted I'd like to resume about 11</p> <p>6 MS POLK Your Honor in terms of redirect</p> <p>7 THE COURT. I'm -- can I see -- everyone has</p> <p>8 seen the complaint I guess now ^ accept ^ except</p> <p>9 me</p> <p>10 MR LI That seems unfair</p> <p>11 THE COURT: What we'll do is I'll need to come</p> <p>12 out before the jury. We'll be in recess thank you.</p> <p>13</p> <p>14 (Recess taken) Is</p> <p>15 THE COURT. The record will show the presence</p> <p>16 of the defendant Mr Ray and the attorneys /FRPL</p> <p>17 the witness /SKPW-T jury are not present</p> <p>18 Counsel, I have not been provided a great</p> <p>19 deal of law on this rather complex issue</p> <p>20 Recalling back to the situation with Mr. Mehravar,</p> <p>21 I can say this My concern there was impeachment</p> <p>22 with a notice pleading complaint that talked about</p> <p>23 toxins and various theories that are presented in a</p> <p>24 could not clues /REU notice pleading type fashion</p> <p>25 Where a client, if you will or a person with very</p>
<p>106</p> <p>1 essentially it's coming into evidence indirectly.</p> <p>2 MR LI. Your Honor, the only --</p> <p>3 THE COURT I'm still waiting, you're saying</p> <p>4 she's seen this statement and some how that means</p> <p>5 it's been adopted and is her statement by operation</p> <p>6 of law</p> <p>7 MR LI I think the Hernandez case is very</p> <p>8 instructive on this point The duties -- the state</p> <p>9 of Arizona has a policy reason to hold everybody</p> <p>10 who makes a claim no matter what form its made to</p> <p>11 the truth that is stated in those claims There is</p> <p>12 a policy duty that you don't just will Li nil I</p> <p>13 file a lawsuit</p> <p>14 THE COURT I've acknowledged Is the right</p> <p>15 from the start is think a /TKEUS /TWAOEFRPBGS claim</p> <p>16 letter under title 12 and the complaint Is there</p> <p>17 really a distinction That's what I asked at the</p> <p>18 very start</p> <p>19 MR LI I would say ^ so I ^ soy Ms. Polk</p> <p>20 THE COURT Ms Polk says in the Hernandez</p> <p>21 your /TAEUG with the lawsuit it and par /TEUFPLT</p> <p>22 the key distinction they I need to read the case</p> <p>23 it's been a few weeks I need to do that Right</p> <p>24 now as I've indicated Based on good faith basis</p> <p>25 for questioning, these questions can be asked</p>	<p>108</p> <p>1 unlikely have any knowledge of those kinds of</p> <p>2 technical terms and the pleading And I even</p> <p>3 wondered at that time if there wouldn't be a</p> <p>4 different situation if the pleading went beyond the</p> <p>5 notice that's required at least in Arizona, went</p> <p>6 beyond that and provided some type of detail where</p> <p>7 logic would indicate the source of the that detail</p> <p>8 That gets you into the question of what's a good</p> <p>9 faith basis for a question Different situation.</p> <p>10 I don't think I've been provided any authority I</p> <p>11 appreciate the states distinction in Hernandez</p> <p>12 saying that's the parties It gets you back to the</p> <p>13 same kinds of issues When is an attorneys</p> <p>14 presentation something that can be used in some</p> <p>15 fashion against a complaint Whether in that suit</p> <p>16 or another suit Totally separate case So I'm</p> <p>17 going to recess I'm going to look into this And</p> <p>18 we're going to have the jury come back at one 15.</p> <p>19 I Juan the parties here at 1 00 And I'll have a</p> <p>20 ruling We'll proceed at that time Thank you</p> <p>21 We are in are /SES</p> <p>22</p> <p>23</p> <p>24</p> <p>25 The record will show the presence of the</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

CASE NO. V1300CR201080049

TRANSCRIPT OF INTERVIEW

Witness: Stephen Ray

By: Truc Do

Date: December 22, 2010

Length: 34:36

1 DO Okay. Other than those two occasions, have you spoken to anyone else in the
2 Yavapai County Sheriff's Office?
3 RAY Just prior to this meeting to confirm the date and location.
4 DO Alright. Have you spoken to anyone . . . you've . . . Ms. Polk introduced herself.
5 Have you spoken to her before?
6 RAY I don't think so.
7 DO Alright. Anyone else from the Yavapai County Attorney's Office?
8 RAY Not that I can recall.
9 DO Alright.
10 POLK And Truc, I'm sorry to interrupt . . .
11 DO Sure.
12 POLK Stephen, I was just looking at the file and noticing that you have an attorney in a
13 civil case, Lou Diesel?
14 RAY Correct.
15 POLK And we had some correspondence with Mr. Diesel. I see it in my file indicating
16 that this interview would take place. Do you know if he had an intention to be
17 present for this interview?
18 RAY I don't know of his intention. I spoke with him on the phone and he said that he
19 would be available if needed today.
20 POLK But you're comfortable going ahead with this interview without Mr. Diesel
21 present?
22 RAY Yes.
23 POLK Okay. Thank you. I'm sorry to interrupt. Thank you, Truc.
24 DO No problem. Thank you for that clarification. And again, if you . . . if at any time
25 you want to ask Mr. Diesel a question, I don't mind you interrupting. We'll take
26 a break.
27 RAY Okay.
28 DO Have you spoken to anyone else other than the Sheriff's office or someone from

1 RAY Lisa Rondan. And I don't think that she's a nurse.
2 DO Okay.
3 RAY I - I - I . . .
4 DO Do you know her well?
5 RAY Somewhat.
6 DO Okay.
7 RAY I've . . . you know . . . she came to the hospital after.
8 DO Okay.
9 RAY And I recall . . . I think she used to be a nurse, but she doesn't . . . she hasn't been
10 a nurse for a long time.
11 DO Okay. And she was not inside the sweat lodge. She was actually outside?
12 RAY Correct.
13 DO And she went to the hospital to visit you, and at some point, you had a
14 conversation. Did she tell you what she observed when you came out?
15 RAY I don't recall 'cause that - the time in the hospital was just I -
16 DO A blur.
17 RAY Correct.
18 DO Okay. And I apologize for having to ask you this question. Did you and Lisa,
19 were you guys dating?
20 RAY No, we were . . . we weren't really dating, we just . . . we did stuff together, but
21 we weren't like dating and exclusive or anything like that.
22 DO Okay. Alright. Okay, let me - the last area I'm going to ask you questions about
23 Mr. Ray is, I'm not sure if this is correct or not, at some point did you have a civil
24 lawsuit filed against Mr. James Ray?
25 RAY You know you'd have to ask Lou Diesel . . .
26 DO Okay.
27 RAY . . . because I don't know what . . . how what . . . if there was any of the details on
28 what happened, I just retained Lou and then he . . .

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

CASE NO. V1300CR201080049

TRANSCRIPT OF INTERVIEW

Witness: Stephen Ray

By: Det. Shonna Willingham

Date: 10/29/09

Location: Telephonic

Length: 1:44:27 minutes

1 could not go back in and get other people out. I've heard a lot of
2 frustrations that it came down to the participants taking care of each other
3 for the most part. And I can really empathize with you on that. Do you
4 have any questions for me Stephen?

5 RAY: Just is there going to be any type of transcript of the questions and answers
6 that I can have. I haven't yet decided what recourse I plan to take because
7 I'm not like the type that wants to chase ambulance, kind of thing.
8 However, not having insurance, the hospital people have told me that my
9 hospital bills since I was there in intensive care for so long, that it could
10 reach into the six figure range.

11 WILLINGHAM: Oh my.

12 RAY: So I'm scared to death. Because I don't have a job and I've in essence
13 almost used all my savings and stuff. So I have spoken with an attorney
14 but I haven't retained him yet and he's going to send a strongly worded
15 letter with the bills to James Ray requesting payment. But he did suggest
16 that I get a transcript of the questions and answers.

17 WILLINGHAM: Okay. Right now we are keeping this as closed as we can so . . . anything
18 you see on the press and stuff is not coming from us. We are in the
19 process of completing an investigation and thoroughly examining
20 everything that was out there, everything that we've obtained through
21 search warrants to examine the procedures that took place, because bottom
22 line our job as detectives is one to figure out why three people died, and so
23 many people got sick at an event and find out who's responsible for that
24 and hopefully bring charges. And yes we are cooperating with the
25 attorneys that the other families have obtained and there are going to be
26 transcripts at some point.

27 RAY: Okay.

28 WILLINGHAM: At this point, we're keeping everything as closed as we can just to . . .

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA,

 Plaintiff,

 vs.

JAMES ARTHUR RAY,

 Defendant.

CASE NO. V1300CR201080049

TRANSCRIPT OF INTERVIEW

Witness: Stephen Ray

By: Det. Ross Diskin

Date: 01/25/10

Location: Telephonic

Length: 20:31 minutes

1 you know, his own ego and greed.

2 DISKIN: Yeah, you're ... several people have definitely said that. So we'll wait
3 and see what happens. But if you have any questions along the way, feel
4 free to give me a call.

5 RAY: Okay. Yeah, I guess that ... I guess too, part of it, there's um, you know,
6 it's just it's ... one of the things that he's preached, you know, non stop is
7 about honor, integrity, and accountability, and then when something
8 happens, that's the first thing he runs from. [LAUGHTER]

9 DISKIN: Yeah. You mean he's not taking responsibility for this?

10 RAY: [LAUGHTER] Exactly.

11 DISKIN: Yeah, so anyway, I'll try and get back with you. We originally, and let me
12 try and explain this, we consider you guys victims, the ones, I mean even
13 though you survived, obviously, you were injured, and you're hurt, but we
14 aren't at this time really looking to charge him with you being a victim.
15 And so that, your lawyer can explain this, but that affects your right as a
16 victim. If he was charged with a crime in which you're the victim, and
17 he's found guilty, then you're given certain things, like restitution and
18 things like that. But we do consider you guys victims, but since, you
19 know, we're looking at this as a homicide, you know, it might kinda be
20 overkill to tack on, you know, another 50 aggravated assaults, or, you
21 know, endangerments, or whatever. But we can talk more about that in
22 the future, but right now we're just looking at the homicide charges.

23 RAY: Okay.

24 DISKIN: And I can't remember if it was your attorney or one of the other attorneys
25 was, you know, wanting us to list you guys as victims, and I don't know if
26 I ever got back to him, but after I looked into that with the prosecutor, we
27 didn't feel like we needed to do that right now.

28 RAY: Hmm hmm.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

CASE NO. V1300CR201080049

TRANSCRIPT OF INTERVIEW

Witness: Sidney Spencer (daughter,
Alexis Reynolds, present)

By: Det. Wendy Parkison

Date: 10/13/09

Length: 1:24:15

Location: Flagstaff, Arizona

1 REYNOLDS: Yeah, we're going to follow up with care.

2 SPENCER: And you know the money issue is going to be a big one. They're thrashed,
3 they're burned.

4 PARKISON: Umm hmm.

5 SPENCER: And you know I'll have to figure that one out. You know, change my life-
6 when I need to. I'm really thrilled that my kidneys are back but that will
7 change to. I think I'll probably give up alcohol, but I was going to give that up
8 anyway. I mean again.

9 REYNOLDS: She doesn't have an alcohol problem. I have to clarify that.

10 PARKISON: Don't be too hasty.

11 SPENCER: Thank you.

12 PARKISON: Before you start pouring all the liquor down the sink. Take your time.

13 SPENCER: No but I think . . . A girl after my own heart.

14 PARKISON: Nobody wants to be radical here.

15 SPENCER: Are there any other questions you have of me?

16 PARKISON: Not at this time but . . . it is your telephone number in Patagonia. Do you have
17 a land line or do you use just a cell phone?

18 SPENCER: [REDACTED]

19 PARKISON: That's [REDACTED]?

20 SPENCER: Yeah.

21 PARKISON: Okay.

22 SPENCER: And my cell is [REDACTED].

23 PARKISON: Okay. Has anybody talked to you about what to say or not to say if you were
24 talked to by anybody?

25 SPENCER: No I pretty much have no comment until this all plays out.

26 REYNOLDS: It's started, we're getting the calls. And we're going to be getting a lawyer at
27 some point.

28 SPENCER: I mean don't you think that's an appropriate response?



Yavapai County Attorney

255 East Gurley Street
Prescott, AZ 86301
(928) 771-3344 (Criminal)
(928) 771-3338 (Civil)
Facsimile (928) 771-3110

SHEILA POLK
Yavapai County Attorney

January 3, 2011

Truc T. Do
Munger, Tolles & Olson L.L.P.
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

Re: State v Ray, Your letter dated December 27, 2010

Dear Ms. Do:

I am in receipt of your letter dated December 27, 2010. Below are responses to each item.

Request for Stipulation

Thank you for agreeing to stipulate to the chain of custody on the bodies of Kirby Brown, James Shore and Liz Neuman. We will draft a proposed stipulation for your review.

Pending Witness Interviews

We are working with our technology staff and the staff at the Maricopa County Medical Examiners' Office to arrange the video conferencing of the interviews of the medical examiners scheduled for February 6 and 7, 2011.

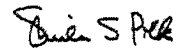
Medical Records

The State does not intend to use the Independent Medical Reports by Dr. Francis O'Connor in its case-in-chief. The two reports were in the State's possession and were provided to Dr. Dickson as part of the information submitted to him for his review. Accordingly, the State disclosed the reports to you. The medical records reviewed by Dr. O'Connor and identified in his reports were provided to him by the attorneys in the civil case. The records you requested in your letter were never provided to the State.

The State has sent a medical records release to Stephen Ray to obtain a complete set of his medical records. When the records are obtained, they will be disclosed.

If you have any questions or need anything, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sheila S Polk".

Sheila Sullivan Polk
Yavapai County Attorney